ISSN 2950-6794 Vol. 1 No. 3 September 2022

KC

THE KING'S COUNSEL

MAGAZINE

His Honour Graham Boal QC

INTERVIEW
His Honour Graham Boal QC
On his Memoir on crime and justice in UK

ON QUEENS COUNSELS
Prof. Noel Cox (New Zealand)
Hon. Justice Peter Spiller (New Zealand)

TRIBUTE TO SIR HARRY OGNALL QC
Robert Smith QC

BLOODY SUNDAY INQUIRY
David Burke (Republic of Ireland)

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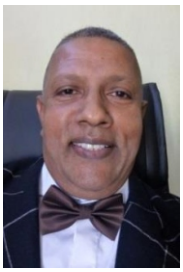
EDITORIAL



Commissions of Inquiry may be established by the Government to inquire into matters of major public importance and concern. The scope of a Commission is determined by its Terms of Reference mandated by the appointing authority. The Commission must also have credibility in the eyes of the public and the appointing authority cannot subsequently interfere in the position taken by a Commission of Inquiry or influence the findings and the report it publishes for public consumption. The Commissioners will have to conduct an inquiry in an impartial and detached manner and in accordance with the terms of reference outlined by the appointing authority. The critics of the Bloody Sunday Massacre Inquiry have called into question the way in which it was handled by **Lord Widgery**. We have reproduced a critique of the Inquiry as reported by **David Burke** in the **Village Magazine of Ireland**.

We have had the pleasure of interviewing **His Honour Graham Boal, QC** on his Memoir **A Drink At The Bar** and he has provided his perspective on the crime and justice in the UK and also about the demon that he had to grapple with from within. He has passed onto the practitioners a wealth of information in his book. A must reading for a practicing Barrister.

Prof. Noel Cox of the Auckland University of Technology New Zealand and the **Hon. Justice Peter Spiller** of the New Zealand judiciary have jointly authored an article on the role of the Queens Counsels and the importance attached to the profession. It does have a critical perspective on the need to retain the system whereas in many Commonwealth countries the title has been done away with. In Sri Lanka, which broke away from British colonial rule, the President appoints senior counsels as Presidents Counsel or known as PC but retains the British style wig for Judges and PC's.

We have a tribute to **Sir Harry Ognall, QC** , and English High Court Justice, written by **Robert Smith QC,** a senior counsel at the law firm New Park Court UK. Robert Smith has provided an incisive analysis of the life and character of Sir Harry Ognall. An interesting piece of biographical journalism worthy of closer study.

We trust our Magazine is of value to the English law practitioners as it caters to the legal practitioners of the British Commonwealth. We would be delighted to hear from the Barristers from across the British Commonwealth. You are most welcome to contribute to this Magazine. You can rest assured that no editing will be done.

Srinath Fernando,
LLM (UK), LLM (Colombo)
Editor-In-Chief / Publisher
01st September 2022

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KC The King's Counsel Magazine is a publication of the Srinath Fernando Diplomacy
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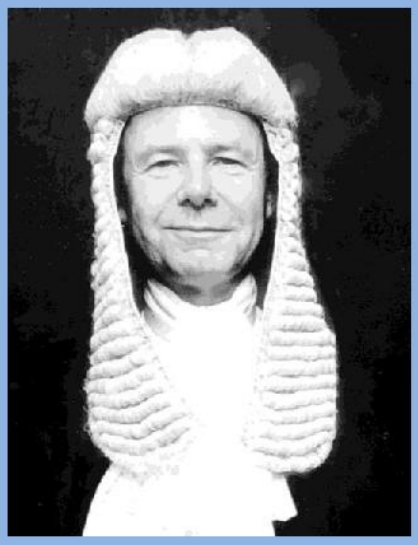
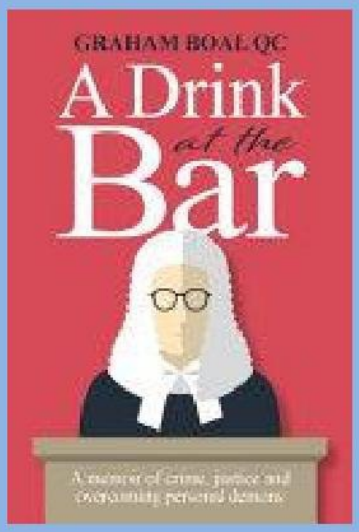
CITATION
KC - The Kg's Cnsl Vol.1, No. 3. September 2022

ISSN 2950-6794

9 772950 679001

INTERVIEW - HIS HONOUR GRAHAM BOAL QC





KC-The King's Counsel Magazine: Justice Graham Boal QC it is truly an honor to have an interview with a retired Justice of the UK judiciary. You have had a very distinguished career spanning four decades practicing Barrister for thirty years and nine years as a Judge at Old Bailey. I would imagine you must have had a bird's eye view of the operation of law and justice in UK. Tell me first Sir, how you began your career.

His Honour Graham Boal QC: There is no history of law in my family but, when I was in my early teens, my father, who was a retired Surgeon-Captain RN, became peripherally involved in the notorious case of the alleged murder of elderly ladies by a GP in our home town. I tried to witness the preliminary hearing, but was thrown out for being too young. So fascinated with the process of the criminal law did I become that I immediately bought a second hand copy of 'The Life of Sir Edward Marshall Hall' by Edward Marjoribanks', and I was hooked. I knew that I wanted to become, not a lawyer, but a criminal barrister. I read law at King's College London, joined Gray's Inn, was called to the Bar in 1966, obtained a pupillage in excellent criminal chambers, learnt my trade at the feet of one of the most respected advocates of his generation and, as they say, the rest is in my book!

KC-The King's Counsel Magazine: I am very sorry to hear about this so called 'demon' of alcoholism which you had to depend on for quite some time. You had to seek treatment for alcoholism and depression in 1993, and has been a recovering alcoholic ever since. Could you please elaborate more on this demon and your current involvement in

the projects to rehabilitate those who are possessed by the same demon?

Graham Boal QC: I was diagnosed with clinical depression in the mid '80s, but it wasn't until 1993 that my depression was positively linked to an addiction to alcohol. Someone once wrote that 'depression is a country that the undepressed cannot visit', which is a useful way of making the point that clinical depression is something which has little to do with the experience, shared by everyone from time to time, of feeling low or 'depressed'. Nor is clinical depression a sign of weakness or lack of will-power. The title of a book written by a leading expert on the subject, Dr Tim Cantopher, is 'Depressive Illness – The Curse of the Strong' encapsulates the proposition. I was admitted to the Priory in 1993 to be treated for clinical depression. I came out with the 'dual diagnosis' that I was 'an alcoholic depressive', meaning that I had fallen foul of the self-delusion that I could effectively dull the effects of depression by using alcohol as a medicine. The fatal flaw in the delusion was not only that alcohol is a depressant drug, but my belief that I could control the use of my 'drug of choice'. I should add that my abuse of alcohol was confined to evenings and weekends, and there never was, or has been since, any suggestion that I drank during the working day or to the detriment of my performance in court. To my amazement, when I returned to practice I was welcomed back and, when I was made a judge, everybody in the profession knew that I was a recovering alcoholic, and supported me.

I was lucky enough to have been treated privately by the leading experts of the time, and I determined to do what I could to support those who were less fortunate. I became a trustee of a small addiction charity which in due course, and under my chairmanship, merged with the larger organization of which I am still a trustee, called WDP. Please Google it and lend us your support.

KC-The King's Counsel Magazine: What was that controversial remark that you made at the Criminal Bar Association annual dinner at which you had made some remarks which attracted press tremendously. Will you please share with those who are outside the UK as to what transpired?

His Honour Graham Boal QC: In 1999, three years after I was appointed an Old Bailey Judge, I was invited to give an after-dinner speech to the annual dinner of the Criminal Bar Association. It was a members-only, black tie event, and my job was to amuse. I decided, however, that I also wanted to make one serious point, and unwisely thought I could make it through the medium of a joke. My point was that, by the end of the 20th century, appointments to silk (QC) and the bench appeared to many of us to being made, not solely on merit, but sometimes because issues of gender and ethnicity were being introduced; it was then sometimes called 'positive discrimination'. Regrettably my words were singularly ill-chosen, and were interpreted by some to indicate that I was a sexist, homophobic, racist bigot. I have no intention of repeating 'the joke'!

KC-The King's Counsel Magazine: During your 40 year legal career, what was the most challenging legal dispute you ever had to deal with either as a Barrister or the Judge?

His Honour Graham Boal QC: Without doubt the most challenging case of my career was the last appeal of 'The Birmingham Six'. I was instructed by the Attorney General and Director of Public Prosecutions to lead for the Crown. I cannot delve here into the legal and factual complexities of the case, but I deliberately chose as the title of the chapter in my book which deals with case the phrase 'The Poisoned Chalice'. So much misunderstanding still persists about the role of the Crown in that appeal, but what I simply want to emphasize is that any suggestion that the state wished to further imprison six men it knew or believed to be innocent is the opposite of the truth.

KC-The King's Counsel Magazine: During your stint as a Judge, have you ever witnessed an argument between counsels of both plaintiff and defendant engaged in any argument in the course of oral arguments where it transgressed the law and bordered on the projection of counsel's ego and personal attacks. How did you deal with disputes arising from counsels going over the professional duties and engaging in arguments which are uncalled for? How were you able to maintain proper decorum in the court house?

His Honour Graham Boal QC: One of the cardinal rules of advocacy is that the words "I think" should never pass the advocate's lips; the views of counsel are irrelevant. Thus "in my submission" or "my clients case is...." emphasize that the role of the advocate is to represent his/her client, regardless of counsel's own personal view. This is the cornerstone of 'the cab rank principle', the gradual eroding of which I much regret.

I tried my last case in 2003, so I cannot speak with any authority about the situation over the last nearly 20 years, but in my 40 years at the coalface of the criminal justice system I saw very little that overstepped the mark. Only once, when trying a murder case at the Old Bailey, did I report counsel for professional misconduct; I like to hope that misconduct of the kind you pose in your question is still very rare. I believe that robes (and even wigs) help to maintain the necessary discipline and sense of authority required for the orderly conduct of a criminal trial. It also means that the judge and counsel are, in one sense, anonymous; I often travelled to the Old Bailey by tube, and I could walk past jurors, witnesses and defendants on bail without anyone recognizing me. A sense of solemnity in court tends to calm emotions, although I am a great believer that a light touch and sense of humour should not be left at the door of the court.

KC-The King's Counsel Magazine: Do you think UK Judiciary has been able to serve the people and resolve many social issues. While you claim in your book your exposure dealing with many criminal cases where do you think the Judiciary has failed to serve the people of UK?

His Honour Graham Boal QC: Again, I must preface what I say by reminding the reader that I have not been at the coalface for nearly 20 years, but I still hope that that we can feel justly proud of our judiciary. It is resolutely independent of political pressure and I am confident that our judges adhere as rigorously to the judicial oath as I tried to: 'to do justice by all, without fear or favour, affection or ill-will'. Judges are

human, and each of us comes to the job with the faults inherent in all humanity, but I hope I am not being naïve in suggesting that our judiciary would be acquitted of any charge of corruption.

One of the great strengths of our criminal justice system is that every decision is subject to appeal, right up to the Supreme Court. Manifestly perverse verdicts of guilty by juries can be reviewed by the Court of Appeal, as can misdirections by judges and apparent bias against the accused in a summing-up. On two occasions when I was at the Bar, my client's conviction was quashed by a decision in the Court of Appeal that the trial judge had not given the defence a fair crack of the whip. Juries are the surest safeguard for all charged with serious crime. As Lord Devlin said, 'trial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives'.

KC-The King's Counsel Magazine: You have covered many issues in your book, what is your assessment of the access to justice in UK - apart from the quality of justice? Do you think UK Judiciary, being one segment of the three pillars of government and UK being a country with a myriad of social issues, has not been able to do justice to the people in dispensing justice. Assume, you are appointed as Minster of Justice tomorrow what reforms would you immediately implement to improve the access to justice in UK or British criminal justice system.

His Honour Graham Boal QC: I can only speak to the criminal justice system: although I have been retired for many years, I am a keen observer of what has been happening to it ever since, and I am still in touch with practitioners and some judges (retired or still serving). I am deeply concerned by what I see. For many years, governments of both persuasions have slowly but surely starved the criminal justice systems of the resources needed to sustain it. That is because politicians see no votes in it. They talk about 'law and order', which they rightly believe is a vote winner, but stay silent about funding a system that is on its knees, and which is, I suspect, no longer 'the envy of the world'.

I was lucky enough to begin my years in practice at the time when legal aid for the defendant was beginning to allow men and women with no personal wealth to enter the profession, and I went on the bench just as cuts to legal aid were beginning to bite. Over the last 25 years, fees have been cut to the extent that the criminal Bar has now been driven to strike action, because young lawyers can no longer afford to contemplate the standard of living that the criminal Bar can give them. It is nothing short of a disgrace. And extremely short-sighted, because, if cases are no longer competently prosecuted and defended, and tried by judges who have an understanding of the system, then society will pay a heavy price.

KC-The King's Counsel Magazine; You have had wide exposure listening to the cross examination by counsels. You must have enjoyed the cut and thrust of cross examination from your vantage point. What was the most fascinating cross examination you could recall now and what type of questions were put to the witness and whether you can share some of the interesting anecdotes.

His Honour Graham Boal QC: I have been lucky enough to witness the stars of my profession in practice. If I were forced to pick one cross-examination, it would have to be George Carman's cross-examination of Peter Bessell in R v Thorpe and Others. I hope that I have given an adequate flavour of what happened in the chapter in my book entitled 'The Trial of the Century'.

KC-The King's Counsel Magazine: Finally Sir, what is your message to the junior Judges who sit in judgment over many complex issues confronting the British society.

His Honour Graham Boal QC: I would be loath to give advice to any judge other than to remember every day the words of that oath you took.

One of the great strengths of our criminal justice system is that every decision is subject to appeal, right up to the Supreme Court. Manifestly perverse verdicts of guilty by juries can be reviewed by the Court of Appeal, as can misdirections by judges and apparent bias against the accused in a summing-up. On two occasions when I was at the Bar, my client's conviction was quashed by a decision in the Court of Appeal that the trial judge had not given the defence a fair crack of the whip. Juries are the surest safeguard for all charged with serious crime. As Lord Devlin said, 'trial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives'.

Queen's Counsel

By
Prof. Noel Cox, Auckland University of Technology New Zealand
Hon. Justice Peter Spiller , University of Waikato, New Zealand

The Attorney-General, the Hon Margaret Wilson, has called for a review of the office of Queen's Counsel. The purposes of this paper are to outline something of the history of the office of Queen's Counsel in England and its extension to New Zealand; then to comment on its current role and the current appointment criteria and process. In so doing, we intend to submit that the office as presently constituted is effective and serves a useful purpose, and that no significant reform is needed. History of the Office England Queen's Counsel are barristers appointed by patent to be one of Her Majesty's counsel learned in the law. They do not constitute a separate order or degree of lawyers. But whilst utter barristers were called to the Bar by their inn of court, the Queen's Counsel were called by the Court within the Bar, a distinction which is, of course, inapplicable in New Zealand, where barristers are called to the Bar by the judges of the High Court. They were thus more than merely a professional rank, as their status was conferred by the Crown and recognised by the courts. The Attorney-General, Solicitor-General, and King's Serjeants were King's Counsel in Ordinary. The first Queen's Counsel "Extraordinary" was Sir Francis Bacon, who was given a patent giving him precedence at the Bar in 1597, and formally styled King's Counsel in 1603 (WS Holdsworth, History of English Law (1938) vi 473-4; Patent Rolls, 2 Jac I p 12 m 15).

The obsolete rank of Sergeant-at-Law was formerly more senior, though it was overtaken formally in the 1670's, and professionally in the course of the late eighteenth century by the newer rank. The Attorney-General and Solicitor-General, had similarly succeeded the King's Serjeants as leaders of the Bar in Tudor times, though not technically senior until 1623 (except for the two senior King's Sergeants) and 1813 respectively (JH Baker, "The English Legal Profession 1450-1550" in Wilfred Prest (ed), Lawyers in Early Modern Europe and America (1981) 20). But the Queen's Counsel only emerged into eminence and integrity in the early 1830's, prior to when they were relatively few in number. It became the standard means of recognising that a barrister was a senior member of the profession, and the numbers multiplied accordingly (Daniel Duman, The English and Colonial Bars in the Nineteenth Century (1983) 35. It became of greater professional importance to become a QC, and the serjeants gradually declined. The QCs inherited not merely the prestige of the serjeants, but enjoyed priority before the courts. 2 Queen's Counsel and serjeants were prohibited, at least from the mid-nineteenth century, from doing chamber work. They were briefed together with a junior barrister, and they had to have chambers in London (Daniel Duman, The English and Colonial Bars in the Nineteenth Century (1983) 98-99). In Scotland, a separate roll of Queen's Counsel was created only in 1897, with the first appointed 1898. Formerly, the only QC appointed from the Scots Bar were the Law Officers, and the Dean of the Faculty of Advocates. Till 1920 in England and Wales

they had to have a licence to appear in criminal cases for the defence. On appointment, QCs renounced the preparation of written pleadings and other chamber practices.

Queen's Counsel were traditionally selected from barristers, rather than from lawyers in general. This was because they were counsel appointed to conduct court work on behalf of the Crown. Although the limitations upon private employment was gradually relaxed, they continued to be selected from barristers, who had the sole right of audience to the higher courts. However, in 1994 solicitors of England and Wales were entitled to be admitted to the upper courts. Some 275 were so practising in 1995. In 1995 these solicitors alone became entitled to apply for appointment as Queen's Counsel. The first such was appointed March 1997 (On 27 March 1997, of the 68 new QCs announced, two were solicitors. These were Arthur Marriott (53), partner of the London office of the American law firm of Wilmer Cutler and Pickering, and Dr Lawrence Collins (55), a partner of the City law firm of Herbert Smith.). New Zealand First appointed June 1907, Queen's Counsel occupy in New Zealand a position in the nature of an office under the Crown, although the formal authority for the appointment of Queen's Counsel is regulation 3 of the Queen's Counsel Regulations 1987. Appointments are made by the Governor-General by Order-in-Council, on the recommendation of the Attorney-General with the concurrence of the Chief Justice.

A fee is payable on appointment (Queen's Counsel Regulations 1987 cl 4, $100, now $270 by 1992/128). Till 1956 appointments were made under the general authority of the Letters Patent Constituting the Office of Governor-General, by letters patent. Since then they have been under the authority of the Law Practitioners Act 1955, and now 1982 (1955 s 15 (and later enactments)). Queen's Counsel receive a patent on appointment. As soon as possible after the appointment, a new Queen's Counsel is called to the inner Bar, and reads the declaration of a Queen's Counsel. The following is the text of the declaration taken by Queen's Counsel: I do hereby declare that well and truly I will serve the Queen as one of Her Counsel learned in the Law, and truly counsel the Queen in Her matters when I shall be called and duly and truly minister the Queen's matters and sue the Queen's process after the course of the law and after my cunning. I will duly in convenient time speed such matters as any person shall have to do in the law against the Queen as I may lawfully do without long delay, tracting, or tarrying the party of his lawful process in that to me belongeth. I will be attendant to the Queen's matters when I shall be called thereto. 3 This declaration preserves the identity of these senior counsel as "Her Majesty's Counsel learned in the law". There is little evidence of why Queen's Counsel were only introduced in 1907, fifty years after Australia, and thirty years after the last Australian colony received them (Jeremy Finn, "A Novel Institution: The First Years of King's Counsel in New Zealand 1907-1915" [1995] NZLJ 95). However, it has been suggested that it was to improve the appointment of judges. Since Hoskings and Stringer in 1914, nearly half of the Bench have been King's or Queen's Counsel, including six of seven Chief Justices from Skerrett to the present. Not all welcomed the new office however, with opposition from both within and without the legal profession (Finn, Jeremy, "A Novel Institution: The First Years of King's Counsel

in New Zealand 1907-1915" [1995] NZLJ 95, 96). This was motivated largely, it would seem, by suspicions that the new office would be monopolised by the larger centers. Till the passage of s 3 of the Law Practitioners Amendment Act 1915, QCs could practice as solicitors also.

The forced abandonment in 1915 of joint practise is the only instance where Parliament has intervened in an institution already operating as part of the prerogative, and it affected counsel already appointed (Jeremy Finn, "A Novel Institution: The First Years of King's Counsel in New Zealand 1907-1915" [1995] NZLJ 95, 97). In 1935 s 44 of the Law Practitioners Act Amendment Act made the prohibition on joint practise clearer. This development was designed to bring the status of Queen's Counsel into conformity with contemporary British practice. No practitioners from the independent Bar applied for silk until 1924 (although two solicitors-general took silk), apparently because successful barristers and solicitors believed the risk of abandoning practise as a solicitor to be too great. The term silk of course refers to the traditional use by senior counsel of silk gowns, in contrast to the gowns of junior barristers, which should be stuff, or woollen cloth. Today, both will be likely to be made of a synthetic material, though differences in cut and fabric are still apparent. From 1924 the English tradition, conspicuously not present at the inception of the appointment, of appointing those in practise as barristers sole, was adopted (Jeremy Finn, "A Novel Institution: The First Years of King's Counsel in New Zealand 1907- 1915" [1995] NZLJ 95, 98). Since then the number of QCs have gradually increased, as has the number of members of the independent Bar. Current role, appointment criteria and appointment process Role Although originally the QC was an extraordinary Crown officer- and their declaration retains this flavour- they have since the time of King William IV been largely seen as a mark of recognition for the leading counsel of the day. This was never purely an honorific distinction, however, as it imposed certain obligations, some of which were at times onerous. It is best seen as a professional distinction.

The Government of New South Wales has ceased to recommend the appointment of Queen's Counsel since 1993 ([1993] NZLJ 1. Legal Profession Reform Act 1993 (NSW) 4 §380). The motive for such a move may have been the republicanism of the then state government. The high level of fees paid to QC was also given as a factor, although there was little hard evidence that the incomes of QCs were higher than would be expected for counsel of their seniority. Certainly, there is no evidence that senior counsel has declined. However, the need for some means of identifying senior counsel was felt to be necessary. As a consequence, the New South Wales Bar has invented the grade of Senior Counsel ("SC") to fill the gap left by the abandonment of the status of silk (Sydney Morning Herald, 14 October 1993, p 4). Such a need is also seen in other professions, where it is usually met by the use of grades of membership in professional bodies (Thus the seniority and experience of a professional arbitrator will be seen by their use of the style FArbINZ, less experienced by the style AArbINZ). The appointment of Queen's Counsel has also been ended in Queensland, which now uses the style State Counsel (SC). Thus, the need for a style for senior counsel was recognised. Senior Counsel are also found in Belize. In those Commonwealth countries which are now republics, the office of Queen's Counsel has generally been retained, though with a new style. Thus

they became Senior Counsel in Guyana, Senior Advocate in India, State Counsel in South Africa, President's Counsel in Sri Lanka, Senior Counsel in Trinidad and Tobago. It is clear that there are marked advantages to having a means by which senior members of the independent Bar may be identified. As a distinction conferred by the Crown, members of the general public, lawyers, and other interested parties can be confident that the recipient is a senior, experienced, and respected member of the Bar. Appointment criteria In 1907 the first 10 Queen's Counsel were appointed in New Zealand. By 1963 there were still only 9 practising in New Zealand, and 13 in 1968. They were to later increase in numbers as the independent Bar grew. Thus in 1978 there were 23 QC and another 84 barristers sole. Thus 21% of counsel were of the senior rank. By 1992 there were 48 QC and another 219 barristers sole. The seniors now numbered 18%.

In 1996 the numbers were 53 QC and another 396 barristers sole (12% senior). Discussion of the partial fusion of the legal profession between barristers and solicitors is beyond the scope of this paper. But, although generally anyone may practice as both barrister and solicitor in New Zealand, practice as a barrister sole is by no means uncommon. Indeed, the independent Bar continues to grow as the legal profession becomes more specialized. The degree of fusion between counsel and solicitors varies throughout the Commonwealth, and indeed between jurisdictions within one country. But it is appropriate for QC to be selected solely from amongst counsel practicing in the courts, for any alternative would render the style meaningless. The English option of allowing 5 solicitors with admission to the upper courts to become QCs is unnecessary in this country, since all lawyers are now admitted as both barrister and solicitor. Those lawyers who choose the path of barristerial practice alone should receive recognition. Although in the early years of the office in New Zealand QCs practiced as solicitors also, that was at a time when the independent Bar was small, and few could afford to abandon practice as solicitors. The independent Bar is now significantly stronger, and the division between barristers sole and those barristers and solicitors who choose to practice as solicitors also is more marked. Senior solicitors may be identified by becoming partners of firms. There is only the office of QC to distinguish a senior barrister. Given the existence of a separate Bar, were the office to be extended to those practicing as solicitors, the nature of the office would be radically changed. If there is envy amongst solicitors of the bestowal of the office upon barristers alone, let the solicitors be appeased by the creation of a new office. This could be confined to solicitors, and might be styled Queen's Solicitor. Appointment process The criteria for appointment of QC were never drawn together in a comprehensive way. Appointment is made only of the select few regarded as worthy of the prize awarded to the specially diligent, learned, upright and capable members of the Bar (Memorandum of November 1980 from the Chief Justice and Minister of Justice [1980] NZLJ 476). In more recent years there have also been several one-off appointments of non-practising barrister, the first being Sir Kenneth Keith (See Sir Thomas Eichelbaum, "Appointment of Queen's Counsel" [1995] NZLJ 8, where Sir Kenneth Keith was appointed. Similar honoris causa appointments have also been made in the United Kingdom). More recently, the Clerk of the House of Representatives, David

McGee, was appointed a QC. The general requirements for appointment include eminent practice at the Bar, reasonably frequent engagement in important litigation, professional success dependent on scholarship, court experience and sound judgment, reputable private life, principal interest in the practice of law, and the spread of counsel at the Bars of the main centers.

Application is made to the Solicitor-General, giving a history of experience at the Bar, and the particular reason for seeking to take silk. Applications are sent to the Attorney-General and the Chief Justice. The latter seeks the views of the High Court and Court of Appeal judges, and indicates to the Attorney-General whether he or she supports the application. The Attorney-General consults as he or she thinks appropriate. Applicants are notified by the Solicitor-General, and the Attorney-General publishes a list of appointments (Jeremy Finn, "A Novel Institution: The First Years of King's Counsel in New Zealand 1907-1915" [1995] NZLJ 95; memorandum of November 1980 from the Chief Justice and Minister of Justice [1980] NZLJ 476). This is not an open process, in that selection is largely along lines similar to the selection of judges. Selection of QC's is however more transparent. The Memorandum of 1980 makes the criteria of selection quite clear (Memorandum of November 1980 from 6 the Chief Justice and Minister of Justice [1980] NZLJ 476). It is also unclear what alternative process could be adopted. Certainly, were the matter left entirely in the hands of the profession, as has happened in New South Wales, there could be public concern that the selection of new senior counsel was not made in an impartial manner. The selection process has also been criticized from time to time in England. On the 4th of April 1996 the appointment of 66 new QCs was announced. There had been 488 applicants, including 40 women and 14 from racial minorities. Of the new QCs, four were women, and one from a minority race. This was taken to imply discrimination of some kind, though the evidence for such a belief was inadequate (Times (London), 5 April 1996). Conclusion Appointment as a Queen's Counsel is not simply a matter of privilege, and Queen's Counsel are generally conscious that the conduct of their practice should reflect their responsibilities. The appointment of Queen's Counsel helps to provide incentives for those practising at the independent Bar, by providing an office to which court practitioners can aspire. Most within the legal profession would agree that the standing and standards of the profession would be diminished if the rank of Queen's Counsel were to be abolished or seriously (See Rt Hon Paul East, QC, "The Role of the Attorney General" in Philip Joseph (ed), Essays on the Constitution (1995) 184-213). The title of Queen's Counsel (as opposed to Senior Counsel or the like) should be retained as reflecting New Zealand's constitutional structure, the history of the institution in New Zealand, and its established reputation in New Zealand and abroad. There appears to be no groundswell of opposing opinion or compelling reason to change

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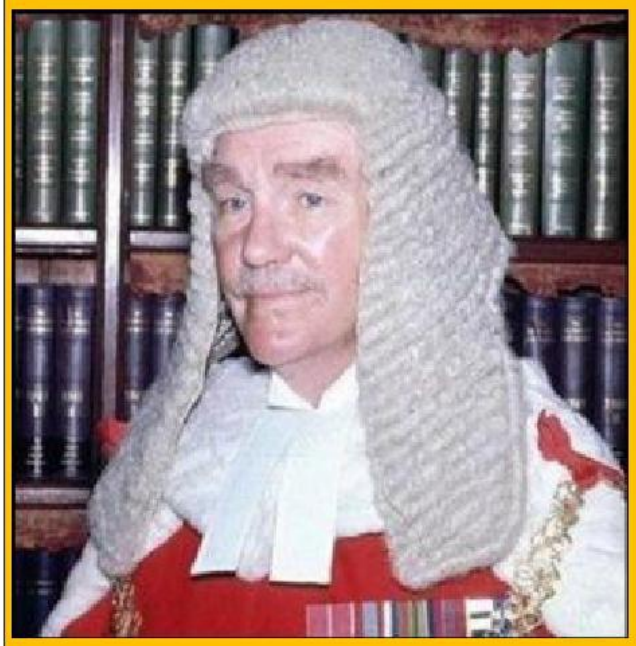
Lord Widgery, the unscrupulous judge who covered up the murders of Bloody Sunday.

By David Burke,

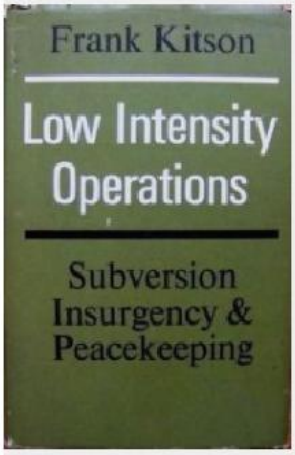
This article was first published on 2 July 2021. It is republished to mark the 50th anniversary of the publication of Lord Widgery's infamous report which defamed the victims of Bloody Sunday and exculpated those who murdered them. We reproduce this article with the Permission of The

How and why he did it. Lance Corporal David Cleary (Soldier F) and other Bloody Sunday shooters have been protected by the British State for five decades. This perversion of justice began with the connivance of the Lord Chief Justice of England and Wales, John Widgery, a former British Army brigadier, Freemason and oath-breaker. He published his infamous report 50 years ago this month.



Brigadier Frank Kitson subverts the law.

Brigadier Frank Kitson of the British Army was a so-called counterinsurgency guru. He was sent to Northern Ireland in 1970 to tackle the IRA. The following year his astonishingly indiscreet book, 'Low Intensity Operations' was published. In it he explained that there were two ways of administering the law during a counterinsurgency, the first one being that:



> *"the law should be used as just another weapon in the government's arsenal, and in this case it becomes little more than a propaganda cover for the disposal of unwanted members of the public. For this to happen efficiently, the activities of the legal services have to be tied into the war effort in as discreet a way as possible ... The other alternative is that the law should remain impartial and administer the laws of the country without any direction from the government.* [Kitson (1971), p. 69.]"

The first tribunal investigating the events of Bloody Sunday – Widgery – is a good example of how the law was used as "just another weapon in the government's arsenal".

On Monday 31 January 1972, Tory Home Secretary Reginald Maudling announced in the House of Commons that there would be a judicial inquiry into the Derry massacre. That evening British Prime Minister Ted Heath and Hailsham, his Lord Chancellor, asked Lord Chief Justice Widgery to chair it. Widgery had been a surprise appointment as Lord Chief Justice of England and Wales by the Tories the previous year. He was not viewed as a jurist of the first rank by his peers. His career was one which would ultimately descend into bedlam. The *Private Eye* magazine would report that "he sits hunched and scowling, squinting into his books from a range of three inches, his wig awry. He keeps up a muttered commentary of bad-tempered and irrelevant questions – 'What d'you say?', 'Speak up', 'Don't shout', 'Whipper-snapper', etc". [*Private Eye* Issue 436, 1 September 1978.] These comments were published two years before he stepped down from the bench. The view expressed by the *Eye* is reflective of Widgery's reputation for having been 'difficult' by members of the Bar in Britain. 'Difficult' in this context is a polite euphemism. Widgery was despised by the legal profession which viewed him as a second rate political appointee who strove to conceal his shortcomings in the traditional manner of the lower tier judge: by hectoring, pelting and bullying.

The night before Heath asked Widgery to conduct an inquiry, he had expressed his belief to Taoiseach Jack Lynch that Kitson's paratroopers had behaved properly in Derry. If Heath truly believed what he had said to Lynch, he had an unusual way of showing it. He chose Widgery – a safe pair of hands – and left him in no doubt that he was to pervert the course of justice. At the meeting on 31 January Heath told Widgery that it "had to be remembered that we were in Northern Ireland fighting not only a military war but a propaganda war". It is hard to conceive of a more compromising comment made by a British prime minister to a senior member of the judiciary, let alone the man at its pinnacle. No matter what way one looks at it, the comment demonstrates a breath-taking lack of esteem on the part of Heath for the independence of the judiciary. Yet Widgery did not rise to his feet and leave the room in protest. Instead, he did what his master bid him to do. An Allegedly Independent Judge pre-judges the Murder Victims by Attending a Meeting at which they were referred to as 'the other side' At the same meeting at which Heath had given Widgery his riding orders, the parties to the discussion had also referred to the victims as the 'other side'. [Para (viii) of minute of meeting of 31 January 1972.] Moreover, according to confidential notes by a Widgery associate, the "LCJ" [Lord Chief Justice] could be counted on to "pile up the case against the deceased" even though the evidence provided "a large benefit of the doubt to the deceased." ['Hidden Truths' (1998), p. 95.

Judicial fixers: Widgery and Lord Denning. Both men thwarted the release of the Birmingham Six. Denning was a racist who opposed black people serving on juries. He said: "The English are no longer a homogeneous race. They are white and black, coloured and brown. They no longer share the same standards of conduct. Some of them come from countries where bribery and graft are accepted as an integral part of life and where stealing is a virtue so long as you are not found out... They will never accept the word of a policeman against one of their own."

Threats to Muzzle the Ever Compliant British Media

In the days after the massacre, the journalist Murray Sayle and his colleagues completed a report which was submitted to the *Sunday Times* There was internal opposition to its conclusion, namely that Colonel Derek Wilford, who had led 1 Para in Derry on Bloody Sunday, had set out to provoke the IRA into coming out into the open so his troops could wipe them out. Harold Evans, the editor of the paper, decided to ring Widgery. "I

said we had done a great deal of interviewing and proposed to publish this Sunday. We also had compelling photographs. I told him I presumed contempt would not apply since nobody had yet been accused. It would be an exaggeration to say he was aghast, but he made it very clear it would be 'unhelpful' to publish anything and yes, he would apply the rules of contempt. .. I withheld the article, but that week I took the chance of publishing the shocking photographs by Gilles Peress of unarmed men being shot". [Harold Evans, 'My Paper Chase, True Stories of Vanished Times' (Little, Brown and Co, New York, 2009), p 474.] On Sunday 6 February, the paper reported that, "The law is that until the Lord Chief Justice completes his enquiry nobody may offer to the British public any consecutive account of the events in Derry last weekend". *The Sunday Times* 6 February 1972.] Heath's press office rowed in declaring that anything which anticipated the Tribunal's findings would amount to contempt. This was a highly contentious assertion without precedent to underpin it: there had never been a prosecution over media investigations in such circumstances. The edict led to a report by The *Observer* being suppressed too. It would have contained a detailed reconstruction of the day's events. [Liz Curtis, 'Ireland the Propaganda War, the British Media and the 'Battle for Hearts and Minds' (Pluto Press, London 1984) p. 48.]

Black Propaganda

As Widgery's appointment was being announced in the House of Commons, on 1 February, the British Information Services (BIS) began distributing a document entitled, 'Northern Ireland: Londonderry' in the US. It claimed that 'of the thirteen men killed, four were on the security force's wanted list... One man had four nail bombs in his pocket... Throughout the fighting that ensued, the army fired only at identified targets – and attacked gunmen or bombers... The troops came under indiscriminate fire'. There was not an honest word anywhere in the statement. The most blatant lie was the passage referring to the wanted list which was subsequently withdrawn. Widgery was not disturbed by the BIS document. It did not amount to contempt in his eyes. On the contrary, with the exception of the reference to the wanted list, the BIS document served as the template for his eventual findings.

John Hume wanted an "independent authority" to conduct the inquiry

John Hume and others wanted to oppose Widgery. Hume was of the "firm opinion" that an inquiry would only be acceptable if it was conducted by "an accepted independent authority". Dr Raymond McClean, a civil rights activist and doctor from Derry felt that: " a senior European or American judge should preside, preferably in a neutral location, for example in nearby Donegal in the Republic, which would be convenient for witnesses to attend. They hoped that if the families stood firm, this could be achieved. 'I was extremely disappointed, he wrote later 'to hear that a group of the local clergy, headed by Fr Mulvey, had made a

public statement in favour of attendance at Widgery, and that the immediate families were in agreement with their statement. Our case for a truly independent enquiry had been sterilised at birth. Many important witnesses were then in a serious quandary as to what decision they should make as regards attendance at Widgery. [McClean (1983), p. 139]"

The Tribunal would sit at the County Hall at Coleraine, County Derry approximately 30 miles east of the city. Widgery arrived in an army helicopter each day. The families were handicapped by Widgery from the outset. He appointed one silk and one junior to represent the thirteen dead (as the figure then stood), and those wounded by bullets, not to mention the scores beaten with rifle butts and abused on the streets and brutalised at Fort George in Derry.

Fabricated Evidence

All of the families but one co-operated with Widgery in good faith. They had no idea what was taking place in the background. For a start, fabricated evidence was being generated. A captain who served as a medical officer on Bloody Sunday, known by his cipher, 219, spoke of "Another thing that upset me after Bloody Sunday was the briefing prior to the Widgery Tribunal". He has also stated that: " On my return to the battalion I was assembled, and briefed, with a large number of other officers and men in a hall in Palace Barracks. In the hall we were briefed on what to say and how to say it. The briefing was conducted by members of the battalion (I do not remember who) and by strangers from outside who I believe were lawyers. I do not know whether they were Army or civilian lawyers. I remember sitting there feeling very upset — they were almost putting words into our mouths. I was very upset at the time and even now it upsets me."

Regrettably, the manipulation of evidence was taking place on an industrial scale. There were substantial material discrepancies between what the soldiers first said and what appeared in their statements. Professor Dermot Walsh, the Chair of Law at University of Limerick and the Director of the Centre for Criminal Justice, undertook a meticulous examination of the soldiers' statements which revealed that there were three objectives to the exercise: {i} the erasure of implausible allegations, {ii} the making of statements which corroborated each other, and {iii} the removal of comments which had the potential to lead to accusations of murder. [Walsh, Dermot P.J, 'Bloody Sunday and the Rule of Law in Northern Ireland' (Gill and Macmillan, Dublin 2000)] Some of the statements had been changed up to four times. This information was known to the lawyers acting for the Tribunal but not to those for the families. The only honest paratrooper to have emerged from the storm of lies that have swirled around Bloody Sunday since 1972 is Byron Lewis. He told a similar tale to that of the doctor. It fits perfectly with Professor Walsh's findings.

"There followed a long period of waiting while confined to Hollywood

(sic) Barracks during which time we underwent several searching interviews by the S.I.B. One morning a Sioux helicopter landed in the parade ground and whisked me – Soldier 027 – up and away across Northern Ireland to Coleraine. Again there was the same contrast as my "fateful trip to Derry". A beautiful sunny day, fabulous views of the countryside. Loch Neagh stretching away into the distance. On arrival in Coleraine we flew along the river which runs through that town and sat down between some trees outside the court house, where the Tribunal was in progress. Disguised and escorted I was led hunched up through a mob of waiting pressmen and reporters, and shown into some offices within the building. Here there were a number of soldiers from my Platoon, all disguised as I was and we spent some time pouring over aerial photographs along with the S.I.B trying to establish which shots had been fired by whom and from where what a farce, we were all grinning at each other and drawing lines haphazardly all over the place with the result that the authorities finished up with a series of sophisticated looking spiders webs, which bore no relation to fact. I was then interviewed in an office by two Crown lawyers on Lord Widgery's team. I rattled off everything I had seen and had done. The only thing I omitted were names and the manner in which people had been shot, apart from that I told the truth which I wanted to convey. Then to my surprise one of these doddering gentlemen said 'dear me Private 027, you make it sound as though shots were being fired at the crowd, we can't have that can we?' And then proceeded to tear up my statement He left the room and returned ten minutes later with another statement which bore no relation to fact and [I] was told with a smile that this is the statement I would use when going on the stand. What a situation! The Lord Chief Justice of Great Britain, the symbol of all moral standings and justice having his minions suppress and twist evidence, with or without his knowledge who can tell? I was amazed!"

Lord Saville gave Widgery's Lawyers a Clean Bill of Health

The thought that officials of the former Lord Chief Justice had engaged in such a reprehensible manipulation of the Widgery tribunal was too much for Lord Saville to stomach. Saville was the judge in charge of the second tribunal into Bloody Sunday that began in 1998 and reported in 2010. When he examined this issue, he rejected what Lewis had to say. In the eyes of Saville, it was Lewis who was the culprit, not Widgery and his team. "In our view", Saville propounded, "what is likely to have happened is that Private 027 [i.e. Lewis] felt that he had to invent a reason to explain providing a statement for the Widgery Inquiry that was inconsistent with his later accounts; and chose to do so by falsely laying blame for the inconsistency on others". [Saville Report Chapter 179, paragraph 26 contained in Volume 9.]

Lord Saville, he was unable to countenance that members of his profession and class were capable of deceit.

Unfortunately, this is but one of a number of examples of the type of

shallow thinking Saville occasionally slipped into, inspired perhaps by a reluctance to countenance that members of his profession and class were capable of such deceit. Yet, it is abundantly clear that the soldiers of Support Company of 1 Para lied to both him and Widgery and, clearly, Saville accepted and knew that this was a fact. This being so, how did he think they managed to coordinate such a massive deception without help? If the sham was not overseen by some of Widgery's officials, then by whom was it perpetrated?

Did it not occur to Saville that if no less a figure than the Chief Justice was prepared to take on the brief in circumstances where Heath had given him his riding orders, it was conceivable that he hand-picked or was supplied with officials who were prepared to deliver the desired outcome: a clean bill of health for 1 Para and the commanders and politicians above them. The treatment of Byron Lewis by Saville left a bad taste in the mouth of many. Mickey Bridge, one of those shot on Bloody Sunday, felt that the account of how his statement had been rewritten for him for Widgery was "glossed over at the Inquiry". He has said that: *In fact, his own side tried to discredit him. There were one or two others who also said the statement they got back in 1972 was constructed for them and all they did was sign it and it was not true.* E. McCann (2006), p. 100.]

Widgery treated the truth as a volatile substance and engaged in subterfuge to prevent it exploding in public. First, he rejected Heath's offer to sit with others which meant he was in total control of the proceedings which were duly heard in Coleraine. He followed this by narrowly defining the terms of reference for his inquiry. He would merely examine the events which took place on "the streets of Londonderry where the disturbances and the ultimate shooting took place" over "the period beginning with the moment when the march... first became involved in violence and ending with the conclusion of the affair and the deaths". This meant that he could ignore anything which pointed to a plan to encroach upon the Bogside, including the type of material which *The Sunday Times* had discovered and suppressed. It also meant that an array of MI5 officers such as David Eastwood, 'Julian' of MI5, 'James' of MI5 and others attached to the intelligence services would not be troubled. (They testified later at Saville).

Dr. Raymond McClean.

Another Widgery wile was to exclude witnesses. Dr McClean, who had attended to many of the dying and wounded and gathered evidence of the use of illegal dumdum bullets, decided to offer himself as a witness to Widgery despite his reservations. McClean has described, how:

After much discussion and formal examination of my prepared evidence, the officials informed me that my presence would not be required at the inquiry – this, despite the fact that I was one of only two medically qualified persons on the spot. I had examined and treated the first two casualties shot, had examined four of the dead at the 'scene of the crime', and had been appointed by Cardinal Conway to represent him at the postmortem. Dr Kevin Swords, the only other medically qualified person present who had treated one casualty at the scene, was called to give evidence, and this was only, according to the Widgery Report, to establish

whether or not Gerald Donaghy had anything in his pockets. [McClean (1983), p. 140.] By excluding McClean, the doctor's observations about the use of dumdum bullets were

suppressed.

Another ploy was to conduct what can best be described as a high speed, drive-by, Tribunal. Widgery sat for a mere seventeen days between 21 February and 14 March 1972 during which he heard one hundred fourteen witnesses. The number was an illusion. Only thirty of them were Derry civilians, with some of the central ones being omitted.

Joe Mahon was arguably the single most important witness available to the tribunal. He had watched the cold-blooded murder of Jim Wray in Glenfada Park at close quarters. He was not called to testify. The RUC were complicit in this. Mahon, then sixteen, has explained how, when he had been in hospital after the shooting, RUC officers came to his room. "One was a wee fat detective and I said then that I had seen a man getting shot by a soldier, and the policeman said to my father, 'It would be better if that boy said nothing at all'. That was it. I was never called to Widgery." [McCann (2006), p. 102.] Only seven of the wounded by gunfire appeared before the Tribunal. "I did not think it necessary to take evidence from those of the wounded who were still in hospital", was the excuse Widgery provided in his report for ignoring their evidence.

Contemporaneous recordings were excluded too. James Porter ran a television repair shop. In his spare time, he was a radio enthusiast. So skilled was he, he had managed to monitor and record British army communications on the day from the back of his shop. He handed his recordings over to Peter Pringle of *The Sunday Times*, who, in turn, offered them to Widgery, but they were rejected on the basis that they had been recorded illegally. ['Hidden Truths (1998), p. 59-60.] A mountain of written evidence was ignored too. The Secretary to the Tribunal had been appointed on 6 February 1972 after which he had flown to Northern Ireland. By then the Treasury Solicitor's Department had begun taking statements from witnesses in London. Meanwhile, the Northern Ireland Civil Rights Association (NICRA) had been collecting statements in Derry. All told, 700 would be taken. They were presented to the Treasury Solicitor in London on 3 March and sent to Coleraine the next day. On 10 March W J Smith, Secretary to the Tribunal drew up a memo which indicates the disdainful and dismissive attitude of Widgery to these statements, all of which contradicted the perjury of the soldiers. Don Mullan published an

array of the statements in his 1997 book. It is abundantly clear from it that they were of enormous probative value. Yet, the Smith memo read as follows:

A very large number of these are in fact of no use. It is likely however that had these statements been received at an earlier stage the Treasury Solicitor would have thought it worthwhile to take statements with a view to the writers giving evidence. The LCJ did not see any of the 700 statements until 9 March. Mr Stoker, Mr Hall and myself all discussed the matter with him at different times on that date. I said that if I had been advising a Minister, I would have strongly urged the desirability of taking evidence from at least a few of these potential witnesses, since it was clear that if this was not done there would subsequently be heavy criticism. The LCJ said that he fully understood the point, but did not see how he could avoid such criticism in any case. He considered that the statements, which must surely have been ready for some little time, had been submitted at this late stage to cause him the maximum embarrassment. He was satisfied that there was no real halfway course between not calling any of these witnesses and calling a very large number of them, which he was not prepared to do at this stage. From what he had seen of the statements, only 15 of which Mr Stoker had thought it worthwhile to draw to his attention, he did not think that the people who wrote them could bring any new element to the proceedings of the Tribunal. I enquired whether the LCJ intended to make a public statement about the 700 statements. He said that he did not, but agreed that he should deal with the matter in his report. He was quite prepared to say in the reports that the Tribunal had taken note of all the statements, on the basis that they had all been inspected by Counsel for the Tribunal or by the Treasury Solicitor's offices. Indeed, in the last resort he was prepared to read them all himself, though Mr Stoker assyred gun tgat tgus was not necessary. In his report Widgery would say of the statements that they reached me at a advanced stage in the inquiry . In so far as they contained new materials, not traversing ground already familiar from evidence given before me, I have made use of them. All of the soldiers from Support Company of 1 Para, i.e. the soldiers who had killed the civilians in Derry on 30 January 1972, who appeared before Widgery sang from the same hymn sheet claiming the people whose lives they had taken had posed a threat to them.

Widgery reported on 19 April 1972 whereupon it emerged that he had, at best, misinterpreted the evidence, at worst twisted it to suit the cover-up. David Capper, a reporter with the BBC, had told Widgery that he had heard a single shot fired about two hours before the march began. Yet, when the Widgery Report appeared, the judge claimed that: Mr Capper, a BBC reporter, heard a single revolver shot fired from the crowd he was with at Kells Walk in the direction of soldiers in William Street. He heard this shot after the shooting of Johnson and Donaghy in William Street, but before the Paras moved into Rossville Street.. Capper has criticised Widgery for this misrepresentation. Could the Lord Chief Justice of England and Wales have made such an elementary error or did he twist the evidence to suit the military cover-up? Widgery's attention to detail left much to be desired. Daniel Gillespie, who had been wounded, was omitted from that category of victim. Insofar as the

soldiers were concerned, it was a case of sinner takes all: Widgery professed to believe every word they had tendered to him thus: Those accustomed to listening to witnesses could not fail to be impressed by the demeanour of the soldiers of 1 Para. They gave their evidence with confidence and without hesitation or prevarication and withstood a rigorous cross-examination without contradicting themselves or each other.

He proceesed to argue that the soldiers who identified armed gunmen had fired on them in accordance with the standing orders in the Yellow Card. He proceeded to say that their training made them aggressive and quick in decision, and some showed more restraint in opening fire than others. At one end of the scale some soldiers had displayed a high degree of responsibility whereas at the other, particularly in Glenfada Park, the firing had bordered on the reckless. These distinctions reflected differences in the character and temperament of the soldiers concerned, he opined. In truth none of the 14 who were killed were armed; no warnings were given before they were shot; and Soldier F and his colleagues were never in any danger. Widgery pointed a finger of blame at the NICRA organisers of the march for the tragedy because they had – in his view – created a dangerous situation where a confrontation had become inevitable and that there was no reason to suppose that the soldiers would have opened fire if they had not been fired on first. Widgery also tried to render a scapegoat out of Brigadier Pat MacLellan, the highest ranking officer in Derry, by opining that the intention of senior British army officers to use the Parachute Regiment as an arrest force was sincere but that MacLellan "may have underestimated" the hazard to civilians in doing this in circumstances in which the troops were liable to come under fire. The criticism of MacLellan was egregiously unfair. Fot a start, the soldiers did not come under fire (except for a few irrelevant and inconsequential shots discharged by Official IRA men). More importantly, MacLellan had never contemplated sending 1 Para anywhere near the Bogside. Had his will prevailed, the paratroopers might never have crashed through the barriers and Bloody Sunday would not have occurred.

Brigadier MacLellan seen here behind Harold Wilson

MacLellan, while no pushover, took a largely tolerant, pragmatic and non-confrontational approach to Nationalists in Derry. He believed this tactic would help steady an increasingly unstable set of affairs while the politicians strove for a political solution.On the other hand, Kitson ran Belfast as if he was a gangster boss with the city his patch. He let his enforcers – the paratroopers – run riot. They were permitted to inflame, provoke, assault and even kill those they believed to have stepped out of line. One mentally challenged girl was snatched from the street by paratroopers and orally raped by a gang of them. No doubt countless sexual assaults were perpetrated by his soldiers. Rifle butts were used to smash teeth, ribs and noses as a matter of routine while Catholic homes were often ransacked. It was Kitson's paratroopers who perpetrated the Ballymurphy massacre in August 1971. (See: Brigadier Kitson's motive for murdering unarmed civilians in Ballymurphy.)

1 Para went to Derry on Bloody Sunday on 'loan' from Kitson. It was

they, not MacLelland's troops, who perpetrated the massacre. Soldier F was probably the most prolific of the killers that day. Why Widgery deflected attention away from Kitson – *completely* – and onto MacLellan is perplexing. Kitson's name does not even appear once – anywhere – in the Widgery Report. Why? While it has long since been established that not a single one of those killed on Bloody Sunday was a gunman, terrorist, nail bomber or troublemaker, Widgery blithely stole their good names, all they had left in this world. According to him, although some of the deceased and wounded were to be acquitted of complicity in wrongdoing, there was a "strong suspicion" that others "had been firing weapons or handling bombs" and that the Support Company troops had returned fire, but only at threats, albeit that some of the shooting had "bordered on the reckless". The paraffin test taken of Bernard McGuigan, he alleged, constituted "ground for suspicion that he had been in close proximity to someone who had fired". He attacked John Young too saying: "The paraffin test disclosed lead particles on the web, back and palm of the left hand which were consistent with exposure to discharge gases from firearms. The body of Young, together with those of McDaid and Nash, was recovered from the barricade by soldiers of 1 Para and taken to hospital in an APC [armoured personnel carrier]. It was contended at the hearing that the lead particles on Young's left hand might have been transferred from the hands of the soldiers who carried him or from the interior of the APC itself. Although these possibilities cannot be wholly excluded, the distribution of the particles seem to me to be more consistent with Young having discharged a firearm. When his case is considered in conjunction with those of Nash and McDaid and regard is had to the soldiers' evidence about civilians firing from the barricade, a very strong suspicion is raised that one or more of Young, Nash and McDaid was using a firearm. No weapon was found but there was sufficient opportunity for this to be removed by others". While Michael Kelly was exculpated, Widgery claimed: "The lead particle density on Kelly's right cuff was above normal and was, I think, consistent with his having been close to someone using a firearm. This lends further support to the view that someone was firing at the soldiers from the barricade, but I do not think that this was Kelly nor am I satisfied that he was throwing a bomb at the time he was shot".

Kevin McElhinney was vilified thus:

He was shot whilst crawling southwards along the pavement on the west side of Number 1 Block of Rossville flats at a point between the barricade and the entrance to the flats. The bullet entered his buttock so that it is clear that he was shot from behind by a soldier in the area of Kells Walk. Lead particles were detected on the back of the left hand and the quantity of particles in the back of his jacket was significantly above normal, but this may have been due to the fact that the bullet had been damaged. Dr Martin thought the lead test inconclusive on this account. Although McElhinney may have been hit by any of the rounds fired from Kells Walk in the direction of the barricade – e.g., by Soldiers L and M – it seems probable that the firer was Sergeant K. This senior NCO was a qualified marksman whose rifle was fitted with a telescopic sight and he fired only one round in the course of the afternoon. He described two men crawling from the barricade in the direction of the door of the flats and said that the rear man

was carrying a rifle. He fired one aimed shot but could not say whether it hit. Sergeant K obviously acted with responsibility and restraint. Though I hesitate to make positive finding against the deceased man, I was much impressed by Sergeant K's evidence.

With regard to those shot in Glenfada Park, Widgery assassinated them again, this time with innuendo: It may well be that some of them had been attacking the soldiers in the barricade, a possibility somewhat strengthened by the forensic evidence. The paraffin tests on the hand swabs and clothing of Gerald McKinney and William McKinney were negative. Dr Martin did not regard the result of the tests on Donaghy as positive but Professor Simpson did. The two experts agreed that the results of the tests on Wray were consistent with his having used a firearm. However, the balance of probability suggests that at the time these four men were shot the group of civilians was not acting aggressively and that the shots were fired without justification. I am fortified in this view by the account given by soldier H, who spoke of seeing a rifleman firing from a window of a flat in the south sie of the Glenfada Park courtyard.

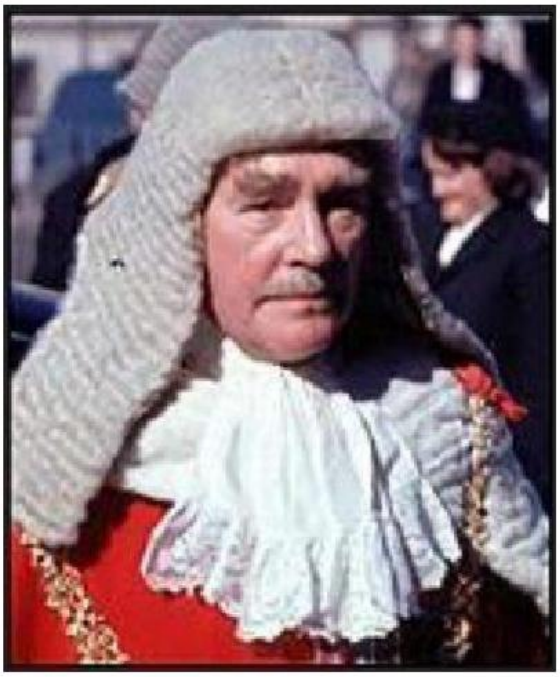
The funeral of the victims of Bloody Sunday.

Gerard Donaghy was cast as a nail bomber. No one now doubts that nail bombs were planted on him. Yet, according to Widgery: On the balance of probabilities the bombs were in Donaghy's pockets throughout. His jacket and trousers were not removed but were merely opened as he lay on his back in the car. It seems likely that these relatively bulky objects would have been noticed when Donaghy's body was examined; but it is conceivable that they were not and the alternative explanation of a plant is mere speculation. No evidence was offered as to where the bombs might have come from, who might have placed them or why Donaghy should have been singled out for this treatment.He also held that there had been no general breakdown in discipline, and that for the most part the soldiers had acted as they did because they thought their orders required it. He commented that no order and no training could ensure that a soldier would always act wisely as well as bravely and with initiative, and went on to express the view that the individual soldier ought not to have to bear the burden of deciding whether to open fire in confusion such as those which had unfurled on the day, but that, in the conditions prevailing in Northern Ireland, it was often inescapable. The majority of people in Britain had found Bloody Sunday little more distracting than a passing parade, albeit a grotesque one. Officially, the report was scheduled for publication on the afternoon of Wednesday, April 19 but the press officers at the Ministry of Defence had other ideas and contacted the defence correspondents of the national newspapers the night before and leaked the sections that showed the army in the best light. 'Army Can Be Proud', *The Daily Express* exclaimed. As Simon Winchester noted:

No mention was made in the "leak" of any "underestimate of the dangers", of any gunfire that "bordered on the reckless" as Widgery remarked in Conclusion Number 8. Those who read their front pages on Wednesday morning would have had to have been very short-sighted indeed to have missed the results of the PR work. "Widgery Clears Army!' They shrieked in near unison; and a relieved British

public read no more – Bloody Sunday, thanks to the propaganda merchants and half a dozen lazy hacks, was now a closed book, with the Irish fully to blame.Winchester 1974 p. 210

Lord Michael Carver, Britain's highest ranking soldier, knew that Widgery was a former brigadier. Carver felt that the British army had been "fortunate to have, in Lord Widgery, a President of the Tribunal who understood soldiers well and sympathised with them in difficult situations in which they were placed". [Carver (1989), p. 418] Widgery was also an active brother of Freemasonry, a secret society notorious for intrigue. There are other even darker possibilities for his misconduct. It has become clear over the decades that Heath was a blackmailer. On his way up the greasy political pole, he served as Tory chief whip, 1956-59. While most Tory whips were blackmailers, Heath brought a professionalism to the task by assembling what became known as the Dirt Book, an encyclopedia of embarrassing information about his colleagues, designed to stop them stepping out of line. It was exploited during the Suez Crisis. Bearing in mind the crass behaviour of Widgery, it is not unfair to ask if Heath had blackmail material on him which ensured he could control him. In the final analysis, the worst-case scenario is that he had nothing on Widgery and that it was assumed that he would automatically step up to the mark motivated by misplaced patriotism, irrespective of how many had been murdered because he was weak, malleable and/or excessively grateful to the politician for his elevation to the most prestigious legal perch in Britain.



Widgery could not have succeeded in his sham tribunal without the co-operation of the Ministry of Defence at the very highest level. The support was probably provided willingly by Sir James Dunnet, the Permanent Undersecretary (PUS). Had he not wanted to co-operate, he probably would have been blackmailed into so doing by those ultimately behind the cover-up. Dunnet was an abuser of 'Dilly boys', young male prostitutes – many of whom were teenagers – whom he picked up at Piccadilly for sex. Dunnet became involved with Vicky de Lambray, a transvestite male prostitute who stole his cheque book in the early 1980s. De Lambray was put on trial in March 1983 instantly igniting a media frenzy during which Dunnet's name was made public. De Lambray died in August 1986. Three hours before she/he was found dead, she/he had telephoned the Press Association stating, "I have just been killed. I have been injected with a huge amount of heroin. I am desperate". She/he claimed that a group of men had administered the injections.

Sir James Dunnet, the Permanent Undersecretary at the Ministry of Defence and Vicky de Lambray.

Dunnet and the MoD were undoubtedly also involved in the cover up of the abuse of boys at Kincora Boys' Home in Belfast while Dunnet was PUS. A number of officers in Lisburn including General Peter Leng, Captain Colin Wallace and Captain Brian Gemmell have confirmed that they knew what was happening at Kincora. Another MoD employee who knew was Peter Broderick. If all of these MoD officials knew, it is unlikely in the extreme that the upper echelons of the MoD – who employed them – did not know. Hence, it is not unfair to speculate that Dunnet was a party to that sordid cover-up too.

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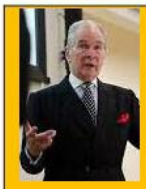
https://villagemagazine.ie/the-guilt-of-an-unscrupulous-former-lord-chief-justice-in-the-soldier-f-cover-up-paratrooper-who-murdered-unarmed-civilians-on-bloody-sunday-has-been-protected-by-the-british-state-for-five-decades-an/

A TRIBUTE TO SIR HARRY OGNALL Q.C.



By Robert Smith QC https://www.newparkcourt.co.uk/barristers/robert-smith-qc/

Sir Harry Ognall will be remembered for his breadth of intellect and his exceptional ability to convey precision in both speech and in the written word, and absolute clarity of meaning in everything he said or wrote. Even after his appointment to the High Court Bench he remained an advocate at heart, as everyone who had the privilege of appearing in front of him was aware. He had a commanding presence both at the Bar and on the Bench. On the Bench he had a habit during summing up to a jury, of sliding his hands into the cuffs of ermine or silk that adorned the sleeves of his judicial robes while he effortlessly guided the jury through the facts of the case and his directions in 2 law. His delivery was faultless and was still that of the advocate that he was, for he had the ability to command the undivided attention of the jury in every one of his cases as a Judge. His long experience at the criminal Bar of England and Wales equipped him with an exceptional ability to manage juries in order to help them to achieve the correct and just result in every case that he tried. He was also a particularly fair tribunal. He was scrupulous in ensuring that every one of the trials which he

presided over was conducted to the highest standard by those who appeared before him. He commanded enormous respect from the Bar. He had the ability to promptly and effectively dismantle flawed legal arguments with his devastating and incisive intellect, as many of his opponents or protagonists when he was in practice at the Bar knew to their cost. He could not and would not tolerate deficiency in standards but he also made allowance for inexperienced members of the Bar and anxious witnesses. Many Judges would have benefitted from the experience of watching and listening to Mr Justice Ognall in his management of cases on the Bench.

These memories of him and admiration for him will have been shared by a host of other lawyers and professionals who came before him or had contact with him in whatever capacity, not just in this jurisdiction, but also overseas where his talents at the Bar were displayed in a number of particularly high profile cases. Above all, Sir Harry was a very human man with a compelling sense of humour and he was a splendid conversationalist. He enjoyed the camaraderie of the Bar. During his years at the Bar his love of the profession and his close relationship with colleagues was all too evident. In those days the Bar took time to have lunch together, juniors being welcomed and indeed privileged to find themselves in the company of experienced and powerful advocates whose talent was concentrated on the North Eastern Circuit. The conversation at lunch was vibrant and intellectually stimulating, as was to be expected from the combination of legal talent in practice on this Circuit during those days. They included his close friends, Peter Taylor Q.C., who was to become Lord Taylor of Gosforth and Lord Chief Justice of England, and Gilbert Gray Q.C., two advocates whose styles could not have been more different.

Harry frequently quoted the advice of Peter Taylor, that in criminal practice on Circuit a member of the Bar needed two important text books. One was Archbold – Criminal Pleading Evidence and Practice, the standard work for criminal practitioners. The other was the Good Food Guide. Harry missed that camaraderie when he left the Bar to assume high office but he always remained a true Circuiteer and he undoubtedly remained a true friend to the Bar, not just to the Circuit, but to all practitioners, throughout his illustrious career. Harry went up to Lincoln College, Oxford to read law in the Autumn of 1953. He worked hard and became President of the University Law Society in his last year. Following that he spent a year in the United States of America and wrote a comparative law thesis for a Masters Degree. He was called to the Bar by Gray's Inn on 25 November 1958, wearing a hired dinner suit from Moss Brothers and he then became a pupil in the Leeds Chambers of Alter Hurwitz, his father having paid 100 guineas for the privilege in those days, in order to advance his son's chosen career. Harry's clerk quickly recognized his talents and his reputation started to build. In those days licensing work for the bookmaking industry was well remunerated and he and Gilbert Gray cornered that particular niche on this Circuit as well as being immersed in common law litigation and serious crime.

Gilbert was to become a lifelong friend and opponent in the early days at the Bar and they shared Chambers together. Harry and Gilbert often appeared against each other at numerous County Courts throughout the Circuit dealing with small claims and personal injury cases. Harry was always greatly amused by a case in which he was retained for the defendant at Malton County Court and in which Gilbert was his opponent. The case involved litigation over the sale of some pedigree pigs. The Judge and Gilbert clearly knew a great deal about farming but Harry was very much out of his depth although supremely confident that his client would be successful. The evidence and the law all supported Harry's client's case. There came a time when the Judge began to express either exasperation or frustration over Harry's inability to grasp the nuances connected with the breeding and selling of pigs, at which point Gilbert rose and said to the Judge: "Your Honour, you must forgive my learned friend, for he is but a city boy and is unfamiliar with our country ways." Needless to say Gilbert obtained judgment for his client and he and Harry drove back to Leeds together. He and Gilbert remained close professional friends throughout their careers but their respective styles of advocacy could not have been more different.

In 1972 Harry was appointed to part time judicial office as an Assistant Recorder. Shortly before he took Silk he was commanding the pick of the high profile criminal cases on Circuit. In 1973 he was appointed Queen's Counsel. He became one of the first choices for the Director of Public Prosecutions in high profile cases and his abilities as a defence jury advocate became both nationally and internationally recognized. His first major case in Silk was the prosecution of a man named Thomas Anderson, also known by his professional title as 'The Harehills Rat Catcher.' Anderson was tried for the murder of an eighty-three years old lady named Daisy Morris who lived at Veleta Cottage on the outskirts of Leeds. In 1906 her great uncle had composed the music and the steps for the waltz which was known as 'The Veleta', which derives its name from the Spanish word for a weather vane. By the time of her death she was living at the cottage as a virtual recluse. Mr Justice Caulfield was to commence his summing up to the jury in that trial with the words: "The Veleta was a beautiful waltz, but there was nothing beautiful about the way Daisy Morris died." Indeed there was not, for she had been strangled inside her home with a ligature made of baler twine. Her body had been discovered by a milkman. Before the police arrived, and while the milkman was still there, the Harehills Rat Catcher made an appearance at the open door of the cottage and made a comment which the prosecution was to contend demonstrated that he was aware that she had met a violent death, a fact which would not have been apparent to anyone standing in that doorway who did not have direct knowledge of the circumstances in which she died.

Anderson was convicted at that the end of a skillfully conducted prosecution in Harry's hands which involved the careful presentation of a circumstantial evidence case. One of the many high points in Harry's career as an advocate was the trial of Peter

Sutcliffe for the serial murder of a number of women over a five year period in Yorkshire and Lancashire. Sutcliffe had been responsible for the murders of at least thirteen women and the attempted murder of another seven. Sutcliffe was to become known as 'The Yorkshire Ripper' having regard to the occupations followed by some of his victims and the appalling injuries that he had inflicted upon them, using a knife and a ball-pein hammer. His offending attracted huge interest over many years as West Yorkshire police tried unsuccessfully to identify their suspect. By chance, Sutcliffe was arrested on the evening of the 2nd January 1981 by a police officer who had been conducting routine motor patrol on the outskirts of Sheffield and had approached Sutcliffe's motor car which was stationary on the driveway of some business premises. The car was bearing false number plates. Sutcliffe's next intended victim was seated in the passenger seat. Sutcliffe was taken into custody and while at the police station he deposited a knife in the lavatory cistern, which was discovered by the police. The police also discovered a knife and and a ball-pein hammer close to where the vehicle had been parked.

These items were of the type that had been used on the earlier victims. Shortly thereafter Sutcliffe made a statement to the police in which he admitted the offences with which he was to be charged. Such was Harry's reputation that his clerk received the instruction from the Director within two days of Sutcliffe's arrest and plainly the Director was anxious to retain the leading criminal advocate on Circuit. In May 1981 the case came on for trial before Mr Justice Boreham at the Old Bailey. The Indictment contained thirteen counts of murder and seven counts of attempted murder. In terms of his defence, Sutcliffe had asserted to the psychiatrists who had examined him that he had been commanded by God to commit these murders. This was to be referred to throughout the trial as 'the Divine Mission' and appears to have been accepted as a truthful account of Sutcliffe's state of mind by the medical experts who had been instructed on both sides. The 'Divine Mission' was to form the underlying factual basis for Sutcliffe's defence. Harry had been confronted with a unanimous body of psychiatric opinion to the effect that Sutcliffe was suffering from an abnormality of mind at the material time and that he was, accordingly, of diminished responsibility.

If that reasoning was correct it would mean of course that Sutcliffe could not be guilty of the charges of murder but would be guilty of the lesser crimes of manslaughter. Despite the weight of unanimous medical opinion in favour of this defence, Harry held the clear view that the public interest required this issue to be tried by a jury and that the prosecution should not accept Sutcliffe's plea of guilty to manslaughter. Harry was supported in his judgment by the trial Judge and the trial went ahead. Harry had formed the clear view that the conclusions of the psychiatrists, who had unanimously expressed their views in favour of a finding of diminished responsibility, relying as they did on the theory of the 'divine mission', were flawed, and he set about the task of dismantling the theories and opinions that they offered through particularly damaging

and incisive cross examination of those experts. The result was that the psychiatric evidence and the case for the 'divine mission' was rejected by the jury, and Sutcliffe was convicted of that series of quite brutal murders. Harry had spent many hours in detailed preparation of his cross examination of the medical experts and in so doing bore in mind a principle that he often quoted in the course of his career as an advocate: "If you can't poison the atmosphere in the first ten minutes of your cross examination you may as well sit down." However, the pinnacle of Harry's forensic achievements at the Bar was the successful defence of six Zimbabwe Air Force officers who faced trial for alleged acts of sabotage and damage said to have been committed by them on July 25th 1982 at Thornhill Air Force Base in Central Zimbabwe. These officers were arrested after saboteurs had cut their way through a security fence and blown up 13 fighter aircraft at a cost to that country's Government of millions of dollars and the destruction of half of its fighter force. One of the defendants was an Air Vice Marshall, another defendant was an Air Commodore.

It was alleged that they had conspired with South African security forces to commit the damage in question and they were charged with treason. When Harry received the brief he learned that all of the accused had made written and signed confessions of their involvement. However, once they had access to legal advice they made it clear that they had been tortured and compelled to confess against their will. Their confessions were not made in the presence of legal representatives and it was apparent that steps had been taken to deprive them of legal assistance. If they were to be convicted, the penalty would be the death sentence. The stakes could not have been higher and there could not have been a more challenging brief to receive and it is probable that it placed on Harry the greatest demands that he had ever experienced during his career at the Bar. However, one of his great qualities was to ensure accuracy in the presentation of evidence and he prepared every case in the finest detail. That approach was to gradually work in the defendants' favour as the evidence in the trial progressed. It had become immediately clear to Harry that the outcome of the trial was going to turn upon the impact of his cross examination of the security officers who had obtained the written confessions. He set about preparation of the defence by examining every conceivable detail of the case and began to closely analyse the evidence relating to the conduct of the security officers who had obtained these confessions. Once the trial began in Harare in May 1983, Harry began to conduct a careful and detailed cross examination of the security officers who had extracted the confessions over the course of evidence which lasted a number of weeks. By the end of it he was mentally and physically exhausted but he had destroyed the credibility of the security officers entirely and he remained confident of one thing. If the Tribunal was one of independence and integrity the only proper outcome would be the acquittal of his clients. Ultimately, in a reserved ruling delivered a number of months later, the Court concluded that all of the alleged confessions should be disregarded. There

was no other evidence against the defendants and they were acquitted. There could have been no more demanding an experience facing any advocate or the professional satisfaction that must have been achieved in its result.

The aftermath of the trial was that the defendants were re-arrested immediately after the verdict on more trumped up charges, but the Government of Zimbabwe intervened and they were all released. They owed their lives and their reputations to Harry's forensic skill. Shortly after his achievements in Zimbabwe, Harry was elected to be a Master of the Bench of Gray's Inn. He found that to be a great honour and was to point out to his friends that the last time he had been addressed as 'Master Ognall' was when he had been at school. There followed many other important cases, both nationally and internationally, all of them becoming more and more demanding. It is probable that Harry welcomed the offer of his appointment to high office given that the work load which followed his successes had begun to bear heavily upon him. He loved his life with his family at home in Yorkshire and he had spent another lengthy period of time overseas, conducting long and complex committal proceedings for the Attorney General in Hong Kong. On the 13th January 1986 Sir Harry was appointed to become a Judge of the Queen's Bench Division of the High Court. He viewed it as a great honour and a recognition of all his achievements at the Bar. And so it was. Shortly after his appointment he was invited by the then Lord Chief Justice, Lord Lane, to become Chairman of the Criminal Committee of the Judicial Studies Board. That too was a recognition of his skill and reputation in the criminal law. In that capacity he enjoyed three years in charge of seminars and training for newly appointed Judges and refresher training for those already appointed. He thereafter spent three years as Vice Chairman of the Parole Board and Chairman of its Life Sentence Review Committee. No member of the Judiciary could have been better equipped to discharge the duties demanded by these important functions. Harry always remembered the support that he had received from the various clerks who served him throughout his career at the Bar and on the Bench. He spoke warmly of Roy Kemp who had been his clerk from the time of his appointment to Silk and to whom he said he owed a great deal in terms of the progress of his career. 9 Following his appointment to the Bench, Harry's first clerk lasted a matter of weeks until his services were dispensed with.

He was replaced by Bob John, a recently retired Metropolitan Police Inspector, who was to remain as Harry's clerk throughout the remainder of Harry's judicial career. Many of us will remember Bob and will have recognised the degree of affection and regard that Harry held for him. In terms of the cases that Mr Justice Ognall presided over in the course of his ensuing and distinguished career as a Judge of the High Court it is fitting to mention one criminal case in particular. This case, above all others, serves to exemplify the man that he was and it also serves as a testament to his enduring sense of fairness together with his conspicuous ability. His rulings in that case emphasize the importance of a strong and

independent judiciary. It is the paradigm example of why Judges must retain their independence and why the legal system requires Judges of such integrity as Sir Harry. On the 15th July 1992 a woman named Rachel Nickell was brutally attacked on Wimbledon Common and died from the most dreadful injuries. The Metropolitan Police made little progress with the case but eventually focused their hitherto fruitless investigation on Colin Stagg, a single man, who was known to walk his dog on the Common. For reasons best known to themselves, the Metropolitan Police obtained a profile of the killer from a psychologist and decided that Mr Stagg corresponded with that profile. The police then set about preparing what could be called a 'honey trap' for Mr Stagg. They used the services of a police woman to make contact with Mr Stagg and to covertly record her numerous conversations with him. Once this evidence was obtained the Crown Prosecution Service concluded that it was sufficient to satisfy the appropriate test to commence a prosecution against Mr Stagg for Rachel Nickell's murder. Thus it was, that in September 1994, just over two years after this lady's death, Colin Stagg appeared before Mr Justice Ognall at the Old Bailey for trial. As events proved over the course of the years that followed, English Justice did not take a wrong turn in this case, although at the time of the trial many asserted that it had.

The defence argued that the evidence of the recorded conversations should be considered in the absence of the jury in order that a ruling could be made in relation to its admissibility and they contended that the evidence had been obtained unlawfully. Their arguments were that the actions of the police contravened the well-established requirement that a suspect must be cautioned before being 'interviewed' and, alternatively, that the words spoken by Mr Stagg and recorded by the police could not in themselves amount to evidence of Mr Stagg's involvement in the murder. The Press was particularly interested in the case and it had received a considerable amount of publicity. Mr Justice Ognall, as one would expect, considered the evidence and the competing submissions with great care. He concluded that he was entirely satisfied of two things. The first was that the conduct of the Metropolitan Police represented "deception of the grossest kind" and that it infringed the long established rule in criminal cases that a confession should not be secured by the police from a person who has not first been cautioned. He also found that there was nothing in the remarks made by Mr Stagg which were capable of supporting a case against him. The conduct of the police, in his judgment, constituted the clearest breaches of the procedural rules governing criminal cases.

He was also concerned that the prejudice created by the media could only increase the risk of a wrongful conviction. All of his experience in the criminal law and, in his judgment, the correct application of legal principle, told him that this prosecution was deeply flawed. Many Judges may not have had the courage to dismiss the case but may instead have ruled in favour of admissibility, seeking refuge in such arguments as the prosecution had advanced in favour of this case going to the jury for

trial. One thing that Harry was not lacking was an abiding belief that his office required him to discharge his duty in accordance with legal principle and correct professional judgment. There was no other evidence against Mr Stagg than these recordings so that when Harry ruled that they were not to be admitted in evidence at the trial, that meant that there was no case to go to the Jury. Mr Stagg was acquitted. But that was not the end of the affair. 11 Harry was immediately subjected to criticism by the media and, even more regrettably, from some sources in the Metropolitan Police and even in the Crown Prosecution Service. On the following day one newspaper proclaimed in its headline "Judge in the Dock." There followed a campaign of criticism of Harry by that newspaper which lasted many years. Other publications followed suit, implying or expressly alleging that the trial Judge had allowed a man, guilty of a dreadful murder, to 'get away with it'. Many years later, in 2006, a police cold case review team investigated the activities of a man named Robert Napper who was then detained at Broadmoor Hospital for the murder, in 1993, of another woman and her daughter. In due course that man was to admit and to plead guilty to the murder of Rachel Nickell in a prosecution supported by the clearest scientific evidence against him. It is fortunate indeed that Harry's enduring sense of fairness and forensic experience produced the result that it did. Not only were his rulings in that case correct in law but he would have known, from long experience at the criminal Bar and on the Bench that this outcry from the media could be predicted as something that would follow his rulings and Mr Stagg's acquittal. None of that deterred him or deflected him from the legal rulings that he concluded were necessary in accordance with the law and he would undoubtedly have faced the public criticism that followed with the same resolve that guided him throughout the whole of his distinguished career. No apology was ever forthcoming from the press for their reporting and commentary on his rulings in that case but at least he had the satisfaction of knowing that the public would eventually realize that he had made the correct decision at the time of Colin Stagg's trial. Harry retired from the Bench in 1999.

His intellect required of him more than the constant diet of homicide trials on Circuit and he made known his views that "a bored Judge was a bad Judge." A bad Judge he never was nor would let himself ever become but he was becoming tired of life in the Judge's Lodgings and in London. He sat on this Circuit, at Leeds Crown Court, for the last six weeks of his judicial career. Since then he has been sorely missed. He 12 was the last of that group of advocates who had adorned the Circuit with their conspicuous ability and which included Harry's good friends, Lord Taylor of Gosforth and Gilbert Gray Q.C. That was not however the end of the profession's insight into a great man's career. In November 2017 Harry asked me if I had a wig stand on which to place his full bottom wig. I asked him why. He told me that he had just completed his autobiography and that it was about to be published by Harper Collins. The publishers wanted an image of a full bottom wig to adorn the front cover. We met in a Spanish restaurant for lunch

and discussed a possible 'book signing' event in Chambers. Harry was delighted with the idea and it went ahead. To my deep regret, as so often happens, I was engaged with clients in London and could not attend but I was anxious, the following day, to receive from the staff in Chambers a full report of the event.

I was reliably informed that the very large pile of copies of "A Life of Crime" which had been delivered to Chambers before I left to go to my meeting had all been signed by Harry that evening and had sold out and I am also reliably informed that the Chambers Chief Executive and the Chambers Administrator were in due course sent out to obtain greater quantities of fine wine, that having run out as well. His autobiography contained a chapter by way of advice to young advocates and the following extract serves to confirm the high standards that he demanded of himself and of others and to which mention has already been made. "Everything you do as an advocate at the Bar should be founded on the bedrock of the interests of justice, and subordinate to that principle. Personal ambition drives most of us. It is an entirely laudable feature of life, but it must never obscure your chosen role as a servant of the machinery of justice." The final words of the 'Acknowledgements' section of his autobiography, serve also to remind us of the fact that Harry was always a 'Circuiteer' and that he remained devoted to the camaraderie of the Bar of the North Eastern Circuit of which he had once been an important part. It reads as follows: "Finally, to all those at the Bar who were my colleagues, my adversaries, and my boon companions as fellow members of the North-Eastern Circuit. In 13 my time with them lies the genesis of these recollections. To have spent most of my professional life with them was a rare and cherished privilege, and a source of unbridled pleasure." While Harry had many able contemporaries there was something very special about him which placed him head and shoulders above all of his contemporaries.

He had great style, not only as an advocate but personally. When he was at the Bar he always drove fine motor cars which were the envy of many juniors and aspiring Silks and he was still driving a Porsche 911 well into his eighties. In Court he was always immaculately turned out. His bands and collars would have been a tribute to any laundry. He was admired for his professional courtesy, something which every good lawyer must strive to achieve and maintain, even in the face of adversity. He was respected at the Bar and on the Bench for his intellectual skills and his decisive intellect. His command of language and the clarity of expression which accompanied it was second to none. I know of no one who did not hold him in the greatest admiration or look on him with respect. One could not do otherwise. Those of us who worked alongside and in front of him have enduring memories of his powerful and commanding presence both at the Bar and on the Bench and we will indeed be fortunate to see his like again.

ROBERT SMITH Q.C. April 30th 2021

KC
THE KING'S COUNSEL
MAGAZINE

SPECIAL MESSAGE TO THE PRESIDENT OF THE UNITED STATES OF AMERICA JOE BIDEN ON NATIONAL SECURITY OF CANADA, UK, NATO, ISRAEL, INDIA, JAPAN, SOUTH KOREA, AUSTRALIA AND NEW ZEALAND

Dear Mr. President,

The invention of hypersonic missiles by the perceived enemies of the United States would be a huge national security concern. The speed with which they are delivered will wreak havoc resulting in breaking the constitutional order of the United States which it had cherished for two centuries. The attack on the U.S. satellite communication facilities in space could be the first strike option against the U.S. It could cut off the President of the U.S from the Nation, from the Military Commanders and the civil government as a result you will not be able to communicate with U.S allies viz., Canada, UK, Europe/ NATO, Israel, Japan, South Korea, India, Australia, New Zealand, and elsewhere. Your position as Commander-In-Chief of the U.S forces would be meaningless if you are unable to communicate with the Nation. The key allies of the U.S., would lose confidence in your ability to wage a coordinated battle against the perceived enemies. The authoritarian regimes in the World would feel triumphant and forge new strategic alliances.

We, KC – The King's Counsel Magazine, call upon you to immediately appoint a Presidential Commission to inquire into the efficacy of the U.S constitution and whether it should be suitably revised or amended to deal with the new threats. This will ensure that the security of the strategic allies of the U.S too is guaranteed in case such an eventuality takes place.

OVER TO YOU MR. PRESIDENT

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